ESTTA Tracking number: **ESTTA199711**

Filing date: **03/20/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 92044571 |
| Party | Defendant<br>Delan Enterprises Incorporated and One Step Up, Ltd. |
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| Signature | /HML/ |
| Date | 03/20/2008 |
| Attachments | osu.jl.trial.brief.3.20.pdf ( 23 pages )(986927 bytes ) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**TRADEMARK TRIAL AND APPEAL BOARD**

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| 200 KELSEY ASSOCIATES, LLC, | : | |
| | : | |
| Petitioner, | : | |
| - v - | : | Cancellation No.: 92/044,571 |
| | : | |
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| ONE STEP UP, LTD., SUCCESSOR IN INTEREST TO DELAN ENTERPRISES INCORPORATED | : | |
| | : | |
| | : | |
| Registrant. | : | |

**REGISTRANT'S TRIAL BRIEF**

**AND**

**OPPOSITION TO PETITIONER'S MOTION TO STRIKE REGISTRANT'S TRIAL EXHIBITS**

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| Registrant. | : | |

## I. PRELIMINARY STATEMENT

Registrant One Step Up Ltd., Successor in Interest to Delan Enterprises, Inc. ("Registrant") is the registered owner of two JONATHAN LOGAN trademarks, Registration Nos. 549,924 and 937,651 (the "Trademarks"), each for use in Int'l Class 25. On April 6th, 2006, Registrant acquired title to the Trademarks by assignment from Registrant's predecessor in interest, Delan Enterprises, Inc. ("Delan").

This Trial Brief and Brief In Opposition to 200 Kelsey Associates, LLC 's ("Petitioner") Trial Brief and Motion to Strike Registrant's Trial Brief ("Pet. Motion")("Pet. Brief.") will demonstrate that *a)* Pet. Motion is predicated on a misunderstanding of the pertinent facts, rules of evidence, and law; and *b)* Petitioner has wholly failed to meet the burden necessary to make the prima facia showing necessary to sustain Petitioner's May 31st, 2005 Petition for Cancellation (the "Petition") on the ground of, *inter alia,* abandonment during the relevant time period, i.e., the three

(3) years prior to May 31st, 2005 ("Relevant Period").

Accordingly, Pet. Motion should be denied and the Petition dismissed.

## II. THE FACTS PERTINENT HEREIN

### A) PETITIONER'S PURPORTED PROOFS

The Trademarks are now, and have been, valid subsisting and enforceable trademark registrations covering a wide array of women's clothing since their respective maturity dates.

Petitioner's sole trial witness, Michael Reich ("Reich") testified on July 30th, 2007 ("Reich Deposition"). Reich testified to a limited knowledge of the "history" of the Jonathan Logan brand: "I was aware of its existence. I was aware that it was in its day one of the major apparel brands in the U.S., a heavy advertiser, and distributed widely". (Reich at 9).

Reich testified to an *assumed* knowledge of the Jonathan Logan brand after 2000, "My general assumption was that it was no longer in the marketplace." (Reich at 9-10); Reich testified that the basis of his *assumption* was, "I didn't see the product in stores. I no longer saw it advertised."

Reich, prior to 1992 owned a cosmetics company (Reich at 6) that, *inter alia*, sold only cosmetics and related products(Reich at 7); after 1992, Reich became involved in real estate and "brand management"; Reich had no direct involvement at any time with

the apparel industry; Reich's familiarity with the apparel industry was as an "adjunct to cosmetics and toiletries". (Reich at 9).

In August 2004, Petitioner by Reich filed a trademark application for "Jonathan Logan" ("Pet. Application."). (Reich at 10). At the time the Pet. Application was filed, Reich was "under the *impression* that it [the Trademarks] was no longer in the marketplace and that there were no sales." (Reich at 12)

Reich tacitly acknowledged the continued existence of the Trademarks goodwill when Reich acknowledged that at the date of the Pet. Application, and after "market research", "We felt that it was a strong market and we could succeed in licensing it for apparel" (Reich 13).

On Petitioner's case, counsel for Petitioner made specific inquiry of Reich as to Reich's efforts , prior to filing the Pet. Application, to determine the status of the Trademarks. (Reich at 12) Reich repeated his "assumption" but volunteered that, in fact, "I don't specifically recall what I did prior to the filing." (Reich at 12).

During the cancellation proceeding (and outside the Relevant Period), Reich purported to conduct an "investigation of the retail marketplace with respect to the Jonathan Logan brand". (Reich at 15) Reich's investigation consisted of having "checked" a "number" of retailers. Reich named two, Annie Sez and Burlington Coat Factory ("BCF"). (Reich at 15)

Reich conducted the investigation after having been informed by Delan that merchandise bearing the Trademarks could be found in "X, Y and Z retail outlets". (Reich at 16)

Petitioner's counsel concluded Reich's trial examination by asking him, "Mr. Reich have you ever seen any evidence that Jonathan Logan was being sold in the U.S. retail marketplace during the time period 2001 to 2004" to which Reich answered, "No". (Reich at 17); Reich's answer to counsel's question, with respect to which there is only the slimmest of foundation, has an evidentiary weight of "zero" having been preceded by Reich's admission, with respect to Reich's undertaking to determine the "status of the [Trademarks]", "I don't specifically recall what I did prior to the filing." (Reich at 12).

Reich, on cross – examination, admitted that with respect to his post-Pet. Application visits to BCF, Reich did not know whether he visited one, two or three BCF store locations (Reich at 19); that Reich had no records with respect to such "visits" (Reich at 20); that Reich took no notes of the visits (Reich at 20); that Reich knew no names of any BCF store employee with respect to whom Reich made inquiry (Reich at 20); that Reich made no inquiry at the BCF corporate level (Reich at 20-21); that Reich knew BCF had several hundred BCF retail outlets (Reich at 21) and that other than the one, two or three visits, Reich made no effort to visit any other BCF retail outlets (Reich

at 21); and that those visits to BCF Reich did make were dictated by geographic proximity to Reich's office and residence (Reich at 21).

With respect to Annie Sez, Reich's investigation was similarly near nil. (Reich at 21-22).

Reich gave no testimony as to whom at BCF or Annie Sez Reich made an "inquiry" concerning the Trademarks; Reich, on cross, admitted Reich made no inquiry of management, but beyond this admission, Reich's inquiry and investigation is an evidentiary void.

Reich admitted that Reich's "investigation", such as it was, took place in 2006, outside "the relevant time period for examining Registrant's use of mark in commerce...from May 31, 2002 to May 31, 2005" (Pet. Brief at 6).

Reich could not recall any investigation of the Trademark at BCF for calendar year 2004, and could not recall any investigation at all concerning years 2001, 2002 or 2003. (Reich 25-26).

Reich admitted that prior to submitting the Pet. Application in 2004, a trademark search was done, but Reich never contacted the then Trademark owner, Delan. (Reich 24-25).

The sum of Petitioner's prima facia case of "abandonment" during the Relevant Period is thus fully encapsulated, delineated and framed by Reich's undocumented

visits to two retailers, outside the Relevant Period, and Reich's evidentiary inconsequential, inadmissible *assumptions* and *impressions.*

For this failure of proof, Registrant, without more, is entitled to dismissal of the Petition.

**B) REGISTRANT' PROOFS**

**1) Stacy J. Haigney.**

BCF by Stacy J. Haigney, Esq. ("Haigney") voluntarily appeared for Testimonial Deposition on October 2, 2007 ("Haigney Deposition") (Haigney at 24). Haigney is employed by BCF as "general attorney", assistant secretary and chief compliance officer. (Haigney at 3). Haigney has been directly employed by BCF since 1990; prior to 1990 Haigney's firm had been "outside" counsel. Haigney, on cross examination, demonstrated a thorough understanding of BCF's purchasing practices, selling and shipping practices, and related documents and records (Haigney 25-33; 38-43).

As general attorney, Haigney is in charge of coordinating and overseeing all litigation matters for BCF, with the exception of employment litigation (Haigney at 5). As assistant secretary, Haigney is authorized to sign documents for BCF (Haigney at 5).

Haigney's chief compliance officer responsibility pertains to potential BCF Sarbanes-Oxley ethical issues (Haigney 5-6).

According to Haigney, BCF operates in 42-43 states, selling primarily apparel, with 370 stores. (Haigney at 6).

Haigney, as general counsel, assistant secretary, and chief compliance officer, is familiar with forms generated in the context of BCF's retail business (Haigney at 7).

On or about August 14th, 2007, and after the Reich Deposition, Registrant contacted BCF by Haigney (see Registrant 2) and supplied Haigney with Registrant's 3, 4 and 5, all materials previously timely supplied by Registrant to Petitioner.

In response, Haigney supplied Registrant with Registrant's 6, Haigney's September 5th transmittal, enclosing copies of a March 2005 BCF purchase order (#7035403) for Jonathan Logan goods issued by BCF to "Jonathan Logan". (Haigney 9-10). The purchase order is for "womans".

Haigney testified that after Registrant received Registrant's 6, Registrant then requested Haigney to undertake a further investigation of BCF Jonathan Logan purchases.(Haigney 9-10)

As a result of Haigney's further investigation, Haigney ascertained additional Jonathan Logan purchases and produced at the date of the Haigney Deposition Registrant's 7 (Haigney at 58). Registrant's 7 was retrieved by BCF and provided to Haigney on the Friday prior to the Haigney Deposition (a Tuesday) (Haigney 11-12). Registrant's 8 was provided to Haigney by BCF staff simultaneous with Registrant 7

(Haigney at 14) and produced on the date of the Haigney Deposition (Haigney at 58).

Each of Registrant's 7 and Registrant 8 were generated as a result of Haigney's request to BCF's account receivable manager; the accounts receivable manager had been a BCF employee for "at least four years" at the date of the Haigney Deposition (Haigney at 55).

Haigney testified that Registrant's 7 and 8 were summary documents generated by BCF from documents maintained by BCF in the ordinary course of BCF's business (Haigney at 55).

Registrant's 7 and Registrant's 8 each reflect transactions wherein Jonathan Logan was shipped to and paid for by BCF. BCF doesn't pay for merchandise it does not receive. As soon as BCF receives merchandise BCF is taken out of the "box" and put on the selling floor (Haigney 55-57) and sold at retail. On cross-examination, Petitioner suggested that Haigney did not know whether the goods were ever sold at the [Texas BCF store] (Haigney at 45], to which Haigney responded:

> "I mean I don't know in the metaphysical sense....[BCF] puts all merchandise on the floor upon receipt, we don't have storage space in the back, we don't have stock....So, you know, unless somehow somebody, for example, pilfered this merchandise before it got to the store, but after it was received—before it got to the floor but after it was received, that's the only way that it wouldn't have been offered for sale." (Haigney at 46).

Haigney 7 and Haigney 8 summarize various BCF Jonathan Logan purchase transactions wherein invoices were generated by Jonathan Logan as vendor for a period

commencing within the Relevant Period, August 10, 2004 and extending through June 2005. Registrant's 7. Registrant's 7 records at least fifty (50) invoices from Jonathan Logan to BCF, substantially all of which were issued in the Relevant Period. Registrant's 7 records multiple Jonathan Logan purchase orders by BCF by its designation of multiple BCF purchase order numbers; the purchase order dates, while not recorded on Registrant's 7 necessarily preceded the related shipment and invoicing, thus placing substantially all of the selling and shipping activity by and between Jonathan Logan and BCF within the Relevant Period.

In fact, Registrant's 6, BCF Purchase Order 7035403 (which is dated March 31st, 2005) appears as a listed purchase order on Registrant's 7 (Haigney at 17-18). Registrant's 7's reference to Modecraft is a reference to a BCF tradename (Haigney at 23).

The Jonathan Logan goods described on BCF Purchase Order 7035403 were disbursed by BCF to at least fifteen (15) different BCF stores (Haigney at 49 and store "listing" at 4th through 8th pages of Registrant's 6.)

The purchase order documents of Registrant's 6 were retrieved and provided to Haigney through the successor to the BCF sportswear buyer who made the Jonathan Logan purchases recorded in Registrant 6. According to Haigney, "Our purchase orders are maintained in our computer memory, even after they've been fulfilled. We do have

a system where we have the words canceled order written in...which indicates...that this order has been fully delivered" (Haigney at 22).

Haigney identified the fax number on Registrant's 3 and Registrant 4 as a BCF New Jersey fax number. The fax "dates" are noted, respectively as April 1, 2005 and April 11, 2005. (Haigney at 18).

Haigney identified Registrant's 2 as including a BCF [advertising] insert, which at page 3, references Jonathan Logan Spring Suits.

Haigney testified that Registrant's 2, 3, 4, 5, 6 and 7 demonstrated BCF's purchase and sale of items bearing the Trademarks (Haigney at 23-24).

**2) Harry Adjmi.**

Harry Adjmi ("Adjmi"), Registrant's President, appeared for testimonial deposition on October 2, 2007 ("Adjmi Deposition")(Adjmi at 3).

Registrant is in the ladies, men's and children's apparel business (Adjmi at 3); at the date of the Adjmi Deposition, Registrant had been in business for 24 ½ years and Adjmi had been President for nineteen years. (Adjmi 4-5); Registrant's annual sales volume is three hundred million ($300,000,000.00) dollars.

Adjmi identified Bates Stamped pages 141 through 151 of Registrant's 10 as the documents by which Registrant acquired the Trademarks, which Adjmi signed (Adjmi 4-5). Bates Stamped page 144 of Registrant's 10 at paragraph 6 (f) sets forth Delan's sworn statement (see Bates Stamped page 148 of Registrant's 10): "Assignor and its

predecessors-in-interest have used the JONATHAN LOGAN mark continuously on and in connection with women's dresses, pant suits, pants, shorts, culottes, blouses, jackets, vests and coats, in the stylized registered form and such usage has continued to the present."

Adjmi testified that Registrant received Registrant's 11 from Delan at the time the Trademarks were acquired from Delan (Adjmi at 9).

Adjmi testified that Registrant does business with Value City, independent of Jonathan Logan related business (Adjmi at 9).

Adjmi identified Maklihon Manufacturing Corp. as a Delan licensee (Adjmi at 10). Adjmi identified Bates Stamped page 87 of Registrant's 11 (received by Registrant from Delan) as a type of invoice common in the apparel industry. (Adjmi at 10).

Adjmi identified Bates Stamped page 88 of Registrant's 11 (received by Registrant from Delan) as a form of purchase order utilized by Value City(Adjmi at 10). Adjmi acknowledged and identified "Jonathan Logan" as the vendor specified on the Value City Purchase Order, which sets forth an "order date" of "5/11/05", within the Relevant Period.

Adjmi identified Registrant's 12 as additional materials received from Delan. Bates Stamped page 73 of Registrant's 12 is another Value City Purchase Order, also bearing an "order date" of "5/11/05" and Jonathan Logan as the vendor. Adjmi cross

referenced the style numbers appearing on this Value City purchase order to the "Maklihon" invoice and style sheets appearing in Registrant's 12. The invoices, purchase orders and style sheets show the use of the Trademarks in connection with women's jackets, pants and skirts during the Relevant Period(Adjmi 8-14).

Adjmi was the custodian of the records at Registrant as received from Delan, including the records of the Value City and Maklihon transactions (Adjmi 21-22). Adjmi identified such documents as being typically generated in a purchase of goods transaction by and between a retailer and apparel manufacturer. (Adjmi at 22).

Registrant has used the Trademarks since Registrant's acquisition. See, generally, Adjmi Deposition at 4-9 and Registrant's 10.

## III. APPLICABLE LAW

### A) THE BURDEN OF PROOF

To cancel a trademark registration, there must be a finding of nonuse and a finding of intent not to continue its use. *Anvil Brand Inc. v. Consolidated Foods Corp., S.D.N.Y. 1978, 464 F. Supp 474, 204 U.S.P.Q 209.*

The burden of proof is on the party claiming abandonment. There is a strong presumption of validity; the party claiming invalidity has the burden of proof. *R.C.W. Supervisor, Inc. v. Cuban Tobacco Co. 220 F. Supp. 453 D.C.N.Y. 1963.* The burden of proof is a heavy one. *Saratatoga Vichy Spring Co. v. Lehman, 625 F.2d 1037, 1044 (2d Cir. 1980).* Abandonment of trademark, because it works a forfeiture, must be strictly proved.

*P.A.B. Produits et Appareils de Beaute v. Santinine Societa in Nome Collettivo di S.A. e. M. Usellini, Cust. & Pat. App. 1978, 579 F. 2d 328, 196 U.S.P.Q. 801* citing *1 J.T. McCarthy, Trademarks and Unfair Competition §17.3 at 592-93 (1973).* See also *Citibank, N.A. v. Citibanc Group, Inc. 724 F.2d 1540 C.A. Ala., 1984 at 1545.* Contrary to Petitioner's argument, the Second and Ninth Circuits do not shift the burden of proof after "nonuse" has been proved. See *Saratoga Vichy Spring Co. v. Lehman, supra* and *Abdul – Jabbar v. GMC, 85 F/3d 407 (9th Cir. 1996).*

Ownership of a trademark registration constitutes prima facie evidence of ownership and use of the Mark. *May Department Stores Co., v. Schloss Bros. & Co., Inc. 234 F. 2d 879, 43 C.C.P.A., Patents, 980.* A registered mark is presumed in continuous use from the date of application to the present. *J.C. Hall Co. v. Hallmark Cards, Inc. 340 F. 2d 960, 962-963 (C.C.P.A. 1965).* "That the assignee of a registration stands in the place of the registrant in all respects is also clear from section 45 of the Lanham Trade-Mark Act, 15 U.S.C.A. 1127 which provides that "the terms applicant" and Registrant" embrace the legal representatives and successors and assigns of such applicant or registrant." *Gillette Co. v. Kempel 254 F. 2d 402 at 404 45 C.C. P.A. 920 at 922.*

The continued existence of goodwill may help rebut a prima facia case of abandonment. *Defiance Button Mach. Co. v. C&C Metal Prods. Corp., 759 F. 2d 1053 (2d Cir.), cert. denied, 474 U.S. 844 (1985).* Reich himself acknowledged the continued

existence of goodwill associated with the Trademarks when Reich acknowledged that, after "investigation" Reich determined that there was a "strong market" for apparel goods bearing the Trademarks.

But here, Petitioner has wholly failed to make out a prima facia case.

Indeed, Petitioner's entire "abandonment" case rests on Reich's *assumptions* and *impressions* as to the non-use of the Trademarks during the Relevant Period.

Petitioner has come forth with no proof and no evidence. Just Reich's naked "assumptions" and "impressions".

Reich's assumptions and impressions do not rise to the level of evidentiary fact; no fact supporting Petitioner's claim of nonuse or an intent not to continue to use can be gleaned from the record placed before the Board by Petitioner.

For this reason alone, the Petition should be dismissed.

**B) THE EVIDENCE ISSUES**

Irrespective of Petitioner's complete failure of proof, Petitioner argues that Registrant's evidence showing actual use of the Trademarks during the Relevant Period is inadmissible.

Assuming the Board need consider Petitioner's "evidence" arguments at all, Petitioner's assertions- "unfair surprise", "irrelevant" (outside the Relevant Period) and "hearsay" are to no avail, and legally and factually unsupportable.

Rule 803 (6 ) of the Federal Rules of Evidence "favors the admission of evidence rather than its exclusion if it has any probative value at all." *Phoneix Assocs. III v. Stone 60 F. 3d 95 at 101 (2d Cir. 1995)*, quoting *In re Ollag Constr. Equip Corp., 665 F. 3d 43, 46 (2d Cir. 1981)*. The "principal precondition to admissibility" is that there be sufficient indicia of trustworthiness to be considered reliable.

> "Documents may properly be admitted under [Fed. R. Evid. 803 (6)] as business records even though they are the records of a business entity other than one of the parties, and even though the foundation for their receipt is laid by a witness who is an employee of the entity that owns and prepared them. Further there is no requirement that the person whose first-hand knowledge was the basis of the entry to be identified, so long as it was the business entity's regular practice to get information from such a person."

*Saks Int'l v. M/V "Export Champion, 817 F. 2d 1011, 1013 ( 2d Cir. 1987).*

For such reason, Registrant's 11 and Registrant's 12, the documents Registrant received from Delan at the time of the assignment, and sufficiently identified by Adjmi as documents typically generated in a purchase of goods transaction by and between a retailer and apparel manufacturer are admissible. Adjmi further qualified and supported the admission of these documents by both Adjmi's custodianship of the

documents at issue with Registrant and Adjmi's first hand knowledge and familiarity with the sale of goods to Value City and, in particular, with the documentation generated in connection with such sales to Value City. Adjmi has such knowledge because of separate non Trademarks sale of goods transactions with Value City.

Registrant's 11 and Registrant's 12 show use of the Trademarks during the Relevant Period, and, as such, and even assuming, Petitioner had made out a prima facia case of abandonment (Petitioner has not), these documents fully rebut any such showing.

Similarly, Haigney demonstrated overwhelming familiarity with Registrant's 3 through Registrant's 8, which, as to BCF, are clearly not hearsay, and are each documents generated by or received at BCF, and are probative on the issues before the Board. Haigney, in his multiple capacities at BCF, was plainly a qualified witness to introduce such documents. These documents-in particular Registrant's 7 and Registrant's 8 - absolutely, unconditionally, and without question demonstrate use of the Trademarks in the Relevant Period in many thousands of dollars to multiple BCF venues throughout the United States.

Similarly incomprehensible are Petitioner's arguments as to "unfair surprise". Petitioner raises this argument principally with respect to evidence showing sales of Jonathan Logan product to two non-parties, BCF and Value City. Each of BCF and Value

City are clearly parties not in control of Registrant.

Registrant's discovery responses plainly set forth Registrant's inability to produce documents not in Registrant's control.

See Rule F.R.C.P 34 (a). See also *In re Flag Telecom Holdings, Ltd. Securities Litigation 236 F.R.D. 177 (S.D.N.Y. 2006)* for the proposition that the burden to show control would here be on Petitioner. Registrant's responses to Petitioner's discovery demands plainly "carved out" from Registrant's document production, documents not in Registrant's control.

Similarly unfounded is the general proposition that Petitioner was "surprised" at all.

As became plain after Reich's Deposition, Petitioner's whole claim of "abandonment" is predicated primarily on Reich's alleged "investigation" at BCF, the very retailer with respect to whom Petitioner now claims surprise!

That Petitioner made no effort to substantively investigate or test the veracity of Reich's "assumptions" and "impressions" with respect to BCF is an omission that should burden Petitioner, solely and exclusively, and not Registrant. If Petitioner is surprised, Petitioner has only Petitioner to blame.

Registrant undertook, after Reich's testimony, to conduct the BCF "investigation" that Reich failed to conduct. The nonparty testimony of BCF is properly

before the Board as "trial" testimony. Registrant had no obligation to "produce" such evidence or testimony in "discovery"; The nonparty testimony of BCF through Haigney disproves and rebuts and lays waste to Petitioner's claim of abandonment and, because there is no basis for exclusion, should be heard by the Board.

The "principal" BCF documents, Registrant's 7 and Registrant's 8 , were provided to each of Petitioner and Registrant by the *non party* BCF, through Haigney, on the day of the Haigney Deposition. Haigney voluntarily appeared at such deposition and voluntarily brought the documents with him that day. Similarly, Haigney 6 was produced by BCF, though Haigney, voluntarily, only shortly prior to the Haigney Deposition and provided to Petitioner prior to the commencement of the Haigney Deposition.

With respect to each document alleged by Petitioner to be inadmissible by reason of falling "outside" of the Relevant Period, the Board is reminded that Petitioner's investigation, such as it was, as testified to by Reich, *also fell outside the Relevant Period.* (The Board is reminded that Petitioner's "evidence" during the Relevant Period is not evidence at all, but only Reich's unsupported naked "assumptions" and "impressions".)

Accordingly, for the Board to "strike" any of the BCF or other evidence on the basis of being outside the Relevant Period , the Board must similarly strike all of Reich's testimony and Petitioner's "evidence" , also falling outside the Relevant Period.

Conversely, if such Reich testimony and Petitioner "evidence" is admissible for any purpose, than Registrant's proofs as to the same period must also be admitted.

Finally, and in any event, the allegedly inadmissible evidence, falling outside the period, is in any event admissible , to demonstrate that Delan, as Registrant's predecessor in interest, at no time intended to abandon the Trademarks.

## IV. CONCLUSION

For the reasons set forth herein, Registrant respectfully requests that *(i)* Petitioner's Motion to Strike Registrant's Exhibits and *(ii)* the Petition for Cancellation be denied.

Respectfully Submitted this 20th day of March, 2008,

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## CERTIFICATE OF SERVICE AND FILING

This certifies that a copy of the foregoing Registrant's Trial Brief and Opposition to Petitioner's Motion to Strike Registrant's Trial Exhibits were served on Petitioner on the date indicated below by placing an envelope and depositing same with the United States Postal Service as First Class Mail, postage prepaid, addressed to Petitioner's counsel of record:

**GRIMES & BATTERSBY, LLP**
488 Main Avenue, 3rd Floor
Norwalk, Connecticut 06851
**Attention: EDMUND J. FERDINAND, III., ESQ.**

and further certifies that the Registrant's Trial Brief and Opposition to Petitioner's Motion to Strike Registrant's Trial Exhibits were filed with the Trademark Trial and Appeal Board via the Board's electronic filing system on the date indicated below.

By: _____
**HARLAN M. LAZARUS, ESQ.**

Dated: March 20, 2008
New York, New York